affirmation

Ontario Human Rights Commission

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Miller Services

Getting here was hard

by Daniel Hill

When reduced to the cold prose in which statutes normally are described, the history of Canadian human rights legislation tends to read like a bloodless litany of enactments and amendments. But it must be remembered . . . that each of the major advances in human rights law was achieved at considerable human cost. The persons waging the struggle were dedicated, tenacious and courageous.

The case for legislation had to be made forcefully because the concept of laws to protect people from discrimination was not popular in the early days. 'You can't legislate brotherly love', argued the opponents of anti--discrimination laws in the '50s and '60s, many of them people of good will. The so-called educational approach, exemplified by brotherhood celebrations, was far more popular. Consequently, victims of discrimination who publicized their grievances and sought protective legislation had to brave humiliation and, often, the resentment of a society that did not suffer 'trouble makers' gladly.

A coalition of community groups, often run by poorly-paid, but determined, individuals, battled frustration and disillusionment as they worked to generate a climate of opinion in which government would act. One of the most potent forces in the campaign for effective human rights legislation in Canada was the labour movement.

Beginning in 1946, committees against racial discrimination – later known as Labour Committees for Human Rights, and operating in conjunction with the Jewish Labour Committee of Canada – were established in Winnipeg, Toronto,

Women on the March. Early 1970s demonstration for women's rights.

Montreal, Vancouver and other centres. These committees, responsible to their local labour councils, were assigned to assist unions and members in protecting themselves against discrimination and to seek legislative remedies against discrimination in areas outside the scope of collective bargaining.

The work of these modestly financed operations was prodigious. They investigated and documented cases of

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The topless waitress

In December 1982, Prof. John D. McCamus handed down a decision in the case of Susan Ballantyne versus the Molly 'N' Me Tavern in Toronto.

Ms. Ballantyne alleged that when she replied to an advertisement for a waitress, she learned that she would be required to wait on tables in topless fashion. She then launched a complaint with the Ontario Human Rights Commission claiming that she had been discriminated against as a woman, and that the conditions exacted of her were not required of men who also served as waiters in the establishment. They were fully dressed.

Prof. McCamus held that it was not a defence to claim that the employer intended henceforth to employ female waitresses only, because then, he said, 'the respondent would have to establish that the basic function of the job of serving tables is one performed only by females or that the basic function of the job is the provision of entertainment of a kind which can be provided only by females. Neither of these propositions has been established in the present case. Indeed, the evidence strongly suggests that the basic function of the job in question was serving tables, and that this is a job which, in the very tavern in question, was performed by both male and female employees.'

He also dismissed the argument that while the Code might apply to employees, it did not apply in like manner to prospective employees. 'I do not find this interpretation . . . persuasive. In my view, the imposition of a discriminatory work condition which has the effect of discourag-

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Portraying racial diversity–a breakthrough in the advertising sector

by Mark Nakamura

Ontario is clearly a multiracial and multiethnic society. Yet, Ontario advertising has either failed to portray this diversity or, when portraying it, has done so far too often in a stereotyped manner. The advertising industry has been accused by many as portraying and reinforcing, not the racial and ethnic diversity that is Ontario, but instead, the racism that exists in our society.

The issue of reflecting racial and ethnic diversity in advertising is not a new one. In the late '60s and early '70s, the subject of discrimination against visible minority performers, especially blacks, had come to the Ontario Human Rights Commission's attention on numerous occasions. In response, the commission requested Dr. Frederick Elkin of York University to conduct an inquiry and prepare a report on the subject. His 1971 report concluded: 'On the basis of our content analysis of newspapers, magazines, television commercials and the testimony of witnesses there is little doubt that racial discrimination against visible minority groups occurs in mass media advertising. Visible minority groups are judged on their racial characteristics and are not given the same opportunities as whites. There is little doubt, too, that the image of the Canadian population reflected in Canadian advertisements is biased in the sense that we tend to see a country made of whites . . . .'

Six years later, a study was commissioned by the Secretary of State in order to update these findings. Its conclusions, while noting a marginal improvement, were substantively similar to those of Dr. Elkin.

Community groups such as the Urban Alliance on Race Relations and the National Black Coalition of Canada continued to make public their resentment over the numerous absences,

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Policy Statement proclaimed on Race Relations

There are people from over 80 different cultural groups residing in Ontario who add to the richness of our society and who are working for a better life and a better Canada without forgetting their heritage. We all benefit from our diversity as a cultural mosaic blending into one strong united front.

A climate of understanding and mutual respect will not grow on its own initiative. It needs careful and constant nurturing and encouragement through legislation, community activities and public education. Yet the best legislation in the world is rendered useless if people do not work together to put it into action.

We share the hope of the Cabinet Committee on Race Relations that the government's action will encourage public and private sectors to recognize our rich and varied communities.

GOVERNMENT OF ONTARIO

POLICY STATEMENT ON RACE RELATIONS

The Government of Ontario believes that the primary responsibility for creating a society of equals lies with each and every citizen. It also recognizes the importance of decisive and articulate public leadership in the pursuit of harmony and equality between cultures and races.

The Government has for many years valued and fostered the development in Ontario of a multicultural and multiracial society. The resulting racial and ethnic diversity has enriched the lives of all Ontario residents, but nonetheless it is contradicted by acts of racial discrimination and by racial disadvantage.

Accordingly, the Government wishes at this time to reaffirm its policies on race relations, and to reinforce its long-standing commitment to the creation of a society characterized by equality of treatment and opportunity.

Therefore, the Government reconfirms and declares

I RACISM IN ANY FORM IS NOT TOLERATED IN ONTARIO.

II EVERY PERSON IN ONTARIO HAS THE RIGHT TO AN EQUAL OPPORTUNITY TO ENJOY LIFE, WORK AND LEISURE IN THIS PROVINCE WITHOUT BEING AFFECTED BY RACIAL DISCRIMINATION OR RACIAL PREJUDICE.

III DOCTRINES OF RACIAL SUPERIORITY, BEING SCIENTIFICALLY FALSE AND MORALLY REPREHENSIBLE, HAVE NO PLACE IN ONTARIO.

IV THE GOVERNMENT WILL WORK TOWARDS THE ELIMINATION OF RACIAL PREJUDICE BY SECURING UNDERSTANDING AND RESPECT FOR THE DIGNITY OF THE HUMAN PERSON.

V ACTS OF RACIAL DISCRIMINATION WILL BE MET WITH THE EFFECTIVE ENFORCEMENT OF THE ONTARIO HUMAN RIGHTS CODE AND WITH THE DEVELOPMENT WHENEVER NEEDED OF NEW LEGISLATIVE INITIATIVES.

VI RACIALLY MOTIVATED OFFENCES WILL BE MET WITH THE FULL FORCE OF THE LAW TO ENSURE THE PROTECTION OF THE PERSONAL SAFETY AND DIGNITY OF ALL PERSONS IN ONTARIO.

The Government calls on every person of goodwill to work together and with the Government for a society in which equality provides the opportunity for each man, woman and child to achieve his or her maximum potential for the greater good.

WILLIAM G. DAVIS
R. ROY McMURTRY
RUSSELL H. RAMSAY

An interesting decision

The Human Rights Code of British Columbia has a provision relating to the rights of a person who, having had a previous criminal or summary conviction, cannot find employment or be promoted because of it. According to the statute, he cannot be discriminated against unless there is reasonable cause for doing so. Such reasonable cause would exist, for instance, where the criminal charge or conviction was, in some manner, directly related to the job at hand. Thus, a person convicted of cheque fraud could be refused employment by a bank on that ground, but not be rejected out of hand by a building company to which he applied for the position of a construction worker.

In this case, a retail company discharged an employee because it came to light that eight years earlier, when he was 17 years old, he had been convicted of stealing under $50 worth of goods, and was sent to jail for half a year. The company claimed that it had not dismissed the employee so much for his previous conviction, but for hiding that information on his employment forms. It admitted that he had been a good employee, that in the years since his release from jail he had been a model citizen – still, it wished no part of him because, by falsifying the records, he had breached a basic trust between employer and employee. The board decided, however, that the conviction was at least a significant part of the company's decision to dismiss the employee. The question that the board of inquiry before whom this matter was heard had to decide was whether the argument that the respondent brought forth was 'reasonable' in the meaning of the B.C. Act.

Basing its reasoning on previous Canadian decisions and, to a significant degree, on United States jurisprudence with regard to Title VII of the Civil Rights Act of 1964, the board concluded that the conviction of the complainant was not related to his employment in the furniture stock room of the respondent. 'Although there is no doubt that the behaviour in question (theft), if repeated, would pose a serious threat to the respondent's ability to carry on its business safely and efficiently, the length of time since the conviction . . ., the fact that the complainant was 17 years old when the offence occurred, the fact that there was no evidence of conduct on his part since (the beginning of his employment with the respondent), — aside from the misrepresentation alleged on the application form — which would indicate dishonest behaviour on his part, and his work record with the respondent all point to the conclusion that the conviction was unrelated to his employment within the meaning of the Code.'

The Ontario *Human Rights Code* also says that a person has a right to equal treatment with respect to employment without discrimination because of his or her record of offences. Similarly does that person have a right to be free from harassment in the workplace on such grounds. However, the Ontario statute defines record of offences to mean a conviction for a criminal offence in respect of which a pardon has been granted or an offence in respect of any provincial enactment (e.g. highway traffic offences). But the definition of the B.C. Board of Inquiry with regard to what constitutes reasonableness is an important precedent that needs to be taken into consideration. Section 10(a) of the Ontario Code speaks of requirements, qualifications and considerations that are 'reasonable and *bona fide* . . . in the circumstances.' The B.C. decision makes clear that no hard and fast general rule can be established, but that each case must be carefully considered on its own merits in all respects.

Memorandum from an employer

Subsequent to a complaint about sexual discrimination, the respondent sent the following memorandum to all employees:

I would like to bring to the attention of employees in the unit that our unit supports the principles set out in the Ontario Human Rights Code. Sexual harassment is covered by the Code under sex discrimination. Sexual harassment refers to any sexually oriented conduct, verbal, physical or by innuendo, that is objectionable or offensive and creates a negative working environment. No employee, either male or female, should be subjected to unsolicited and unwelcome sexual overtures, either verbal or physical. Sexual harassment does not refer to occasional compliments of a socially acceptable nature. It refers to behaviour which is not welcome, which is personally offensive, which debilitates morale, and which therefore interferes with work effectiveness. Any employee who has concerns in this area or would like additional information should contact myself or Personnel.

It is up to us - handicapped persons and human rights

by Jack Longman

Equality of opportunity is an admirable goal for all people, regardless of origin, race, religion, sex and physical or mental handicap. From the beginning, human rights have been a high priority in our province. The Ontario Advisory Council on the Physically Handicapped was established by order-in-council in 1975 with a mandate to advise the government of Ontario, through the office of the Honourable Margaret Birch, Provincial Secretary for Social Development, on matters pertaining to physically handicapped persons in this province.

The council therefore welcomed the new human rights legislation, which provides protection from discrimination against all people with a handicap. The council firmly believes in the need for handicapped persons to have basic rights to living, education, employment and participation as equal members of our total society.

However, we recognize that no society is without faults or ingrained prejudices; hence, we require laws to protect individuals from being exploited or discriminated against by some segments of our population. This has been evidenced in the cases of most minorities, and we are a minority.

The 1981 International Year of Disabled Persons helped to raise public awareness of, and understanding towards, handicapped members in our society. Hopefully, the changes in attitudes will result in closing the gaps of differences for the physically handicapped in the areas of education, employment, housing, transportation and social environment.

You will notice that I have put education as one of the first areas of need. While all the areas are interrelated, the priority is on education. Without it, it is difficult to have success in employment. Some people regard employment as the first step. For most people, employment or other suitable vocational outlets are essential for a satisfactory life experience. Employment has special meaning for people with disabilities, but it is special perhaps because employment is so often denied or made difficult for them.

However, without proper educational preparation of one's potential abilities, the handicapped person is likely to be placed in a meaningless job. Thus, employment merely becomes a shelter and often a dead-end street, leading nowhere. Yes, the physically handicapped represent a great untapped resource in Canada, and particularly in Ontario. All of us have been taught that we can no longer afford to waste our natural resources and therefore must make full use of all the talents, including the handicapped. Otherwise, we will not maximize our potential in the years to come.

As an advisory body, our council is not directly involved in individual counselling, hence we do not have case histories to document discrimination. The council, however, is in contact with many organizations, and through its annual public forums across the province, it gathers vital information on the needs of the physically handicapped community. As one of the supporters and promoters of the new *Human Rights Code*, the council has set, as a high priority, the monitoring and implementing of the Code in curtailing or limiting acts against the human rights of handicapped persons.

Legislation and education by themselves are not going to cure all the ills in our society with regard to handicapped persons. Acts of discrimination should be distinguished from the often unrecognized prejudice out of which they arise. Legislation can do something about specific acts of discrimination. Education is needed to get at the attitudes that lie behind them — and this is where many of our collective efforts ought to be directed.

The Human Rights Commission, government, social service agencies and the private sector all have important responsibilities in removing the barriers that confront us. However, it is also up to us, the handicapped, to help mould public attitudes. It is our own behaviour, our own approaches that will ensure our equality. The operational motto should be 'We are equal as persons, and only different in that we might be blind, unable to walk, unable to speak or hear, or somewhat restricted by disabling conditions. But we are persons with God-given talents. Give us an opportunity and the rest is really up to us.'

Jack Longman is chairman of the Ontario Advisory Council on the Physically Handicapped.

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Editorials

Code's first anniversary

The Ontario *Human Rights Code* became law a year ago on June 15. It is too early to assess its effect on the safeguarding of human rights in our province, but it is not too early to state that in at least two areas it has already made a significant impact. One, of course, is the protection of people with handicaps who, prior to the present Act, had not enjoyed protection from discrimination. The commission now has a special unit for people with a handicap, and public education and enforcement in this regard is underway. We have received many complaints based on these new provisions.

The other area is that of sexual harassment in the workplace and accommodation, now specifically covered in the new Code. There can be no doubt that such harassment is widespread, but, at the same time, it is hard to prove. Still, the number of settlements the commission has approved is steadily rising and, more important, there is a greater understanding on the part of employers and employees that human rights extend to the workplace as they do to every area of human life.

Senior class

Under this title, Thomas H. Middleton wrote an intriguing piece for *Saturday Review* (March 1983). It was occasioned by a sign he saw in Grand Central Station in New York.

> Senior Citizens must be at least 65 years of age and present his or her medicare card.

The English is, of course, atrocious. 'His or her' is a nice bow in the direction of sexual equality, but 'their' would have done very nicely.

Mr. Middleton, however, is puzzled why the operators of Grand Central Station would insist that senior citizens be at least 65 years of age. After all, one can belong to the Association for Retired Persons after the age of 50, and at some of Howard Johnson's Inns the minimum age for special discounts is 55 years — that is, if any one wants to admit that he or she has indeed reached an age that is almost past discretion.

And then, 'Senior Citizens'. We have no idea how the term came about in the first place. Probably, people were formerly called 'old' and thereafter called 'elderly'; then came 'golden age', and now it's 'senior citizens'. In Canada, the federal government at least is less squeamish and calls those past 65 years of age 'old' and pays them off with 'Old Age Security'.

The real problem is, of course, that any attempt to stereotype people will always be fraught with difficulty. Some people are old at 30 and others young at 90. Ideally, all persons should be treated for what they are and not for the class to which they are presumed to belong.

The Ontario *Human Rights Code* still maintains the age of 65 as the time in people's lives when, in the area of employment, they may be discriminated against with impunity.

But thinking on the subject is in flux. After all, it will not be long before the older segment of our population will form 25 per cent of our citizenry.

Seniors Secretariat

Shuffling Sixties band of Cobourg, Ontario have no trouble staying youthful.

Our readers sometimes write

Lyle K. MacLennan, Superintendent of Personnel of the Carleton Board of Education, writes:

Congratulations on your publication *Affirmation*. The examples and cases described are of great help to us as personnel department staff, both for our own information and as examples when we make presentations to the staff within our system.

Your publication is attractively arranged and easy to read. Keep up the good work!

Chairman's corner

Jim Merrithew

The Ontario Human Rights Commission is currently celebrating the first anniversary of the new Code, and is directing its efforts towards promoting international understanding, co-operation, peace and respect for human rights to commemorate the 35th Anniversary of the U.N. Declaration of Human Rights on December 10 of this year.

Over the last year, on both a national and international scale, one issue in particular has loomed darkly and has threatened the well-being of society. The March issue of *Affirmation* carried a powerful and moving article on anti-Semitism, which attempted to dispel the myth that 'it couldn't happen here.' It has happened, it is happening; and we can no longer afford to approach this issue cautiously.

The recent spate of anti-Semitic incidents arose from a number of different factors. It is difficult, perhaps even futile, to isolate one group, point an accusing finger and say, 'You're responsible!' We are all responsible. The Ontario *Human Rights Code* is based on the principle of equality in dignity and rights. The response and commitment of our community to publicly address and expose the evils of anti-Semitism and, in fact, any form of discrimination, must be total.

As a clergyman, I am uncomfortable with the Church's response with regard to speaking out against anti-Semitism. For much of its history, Canadian society has been permeated by an aura of anti-Semitism, particularly among the elite and the clergy. In fact, anti-Semitism was rarely denounced or even gently chastised by the Church, which co-existed in harmony with anti-Semitic sentiment.

For example, the anti-Semitism of the Church in Quebec during the 1920s and '30s manifested itself continuously in sermons and newsletters, and, frighteningly, helped mould Canada's response to the crisis facing European Jewry in the '30s and '40s. During this period, very few Church leaders stepped forward to testify on behalf of those struggling for their lives in Europe. There were always individual clergymen and lay members who were sympathetic and supportive, but their cries were lost amidst the general hostility and indifference.

Fortunately, in more recent times, this attitude has changed considerably. A few years ago, the Lenten message of Cardinal Carter was an eloquent statement of the Catholic Church's present relationship to the Jewish people, and will stand as a model. There has, by no means, been a total about-face, and there is so much more to be done. Some Church leaders now appear more willing to openly condemn anti-Semitic acts and to forcefully combat anti-Semitism. As members of the clergy, we must make every effort to educate and sensitize ourselves, our congregations and those in our religious schools to why, and in what atmosphere, anti-Semitism flourishes; we should not wait until members of the Jewish community bring abusive incidents to our attention.

In Toronto, the Presbyterian, Anglican, United and Catholic Churches are engaged in a joint effort of dialogue with the Jewish community – a reflection of a changed attitude, and also of internal ecumenical co-operation – illustrated by the recent co-sponsorship of a Christian Service in Memory of the Holocaust, commemorating the 40th anniversary of the Warsaw Ghetto Uprising.

Ontario has been a leader in the area of human rights legislation, in nurturing harmonious community relations and in providing public education programs. But human rights legislation must be supplemented by common sense, by sensitivity and by the responsiveness of our established institutions in order to enhance the values that make our society strong. To paraphrase Premier Davis, justice and fairness amongst all people must guide us as we live and work in our communities; these principles constitute an important contractual link, which we all must make, not only with each other, but with our future.

During a recent speech in Toronto concerning the fight against anti-Semitism, Opposition Leader David Peterson calls us to action:

> Leaders in positions of authority must have the resolve to respond to challenge, to act in the face of adversity and, when necessary, to do the unpopular. We must be impressed with an unequivocal . . . will to act when the threat posed by anti-Semitism or any form of naked bigotry looms large. The details of our action may be the legitimate subject for policy debate. The commitment to act must be beyond discussion.

I have committed myself to action – I look to the support of my fellow clergy and friends.

The topless waitress
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ing members of a target group from taking the job in question must be considered to be a constructive refusal to recruit members of the target group . . . If one were not to interpret the Code in this fashion, its provisions could be easily evaded by an employer who indicated that members of a particular target group would be treated less favourably than other employees and thereby discouraged all members of the group from taking employment' (which would be equivalent to a refusal to recruit, which is forbidden by section 4(1)(a)).

The board of inquiry ruled that the respondent had to pay the complainant the equivalent of lost wages and $100.00 in compensation for insult to her dignity.

New Commissioner

The Ontario Human Rights Commission welcomes the appointment of Mary Lou Dingle of Hamilton as a commissioner, effective December 1, 1982, for a three-year term.

A practising lawyer, Ms. Dingle has been actively involved in many community programs, including being a charter member in the Elizabeth Fry Society and a member of the Equal Rights Review and Co-ordinating Committee of McMaster University.

Cino Enterprises Inc.

Racial diversity
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misrepresentations and offensive stereotyping of minority groups in advertising. The government of Ontario was not immune to their criticisms in its role as an advertiser and communicator in Ontario society.

Therefore, when the Cabinet Committee on Race Relations came into being in 1980, the issue of the portrayal of racial and ethnic diversity in government of Ontario advertising and communications was one of the first issues on its agenda.

As a result, in the spring of 1981, the committee established the Ontario Task Force on the Portrayal of Racial Diversity in Government Advertising and Communications. Comprised of representatives of the Staff Working Group of the Cabinet Committee on Race Relations and key representatives in government of Ontario communications areas, the task force held numerous consultations with representatives of the government, community organizations, concerned individuals and the advertising industry in addition to sponsoring two research reports on the subject.

Some of its key conclusions and recommendations include:

> that the advertising and communications of the government of Ontario and of its agencies, boards and commissions should portray the racial and ethnic diversity of Ontario.
>
> that there are no practical barriers to the implementations of this policy. The advertising industry can produce and, if so instructed, will produce, effective advertisements and communications using actors who fairly portray the racial and ethnic diversity of Ontario.
>
> that there is sufficient visible minority talent available to permit the proposed policy to go into effect immediately. Further, implementation of the policy, by creating work opportunities for visible minority actors, will increase the size of the talent pool.
>
> that advertisements and communications using visible minority actors are just as effective as those that do not, and generate no measurable differences in the non-visible minority viewer's ability to identify with or feel positively about the actors.
>
> that there is significant public support in Ontario for the portrayal of racial diversity in government advertising and communications, and only a limited degree of opposition.

On July 8, 1982, its task completed, the task force brought forth its findings and recommendations to the Cabinet Committee on Race Relations. In September 1982, the Honourable R. Roy McMurtry, chairman of the Cabinet Committee on Race Relations announced:

'I am pleased to advise you that following receipt of the task force report, cabinet established a policy that the advertising and communications of the Ontario government and its agencies, boards and commissions should portray the racial and ethnic diversity of Ontario. In addition, cabinet agreed that the task force should remain in existence as an advisory committee to the Cabinet Committee on Race Relations. The task force will have the responsibility of periodically monitoring compliance with the policy and reporting to the cabinet committee.

'You will note that the task force made a number of recommendations concerning interpretations and implementation of the policy. I have asked the task force to give careful consideration to those recommendations in monitoring and assisting in the implementation of the policy.

'The policy established by cabinet marks another important development in our commitment to a society in which diversity and equality co-exist in principle and fact. I hope that we can count on your support in making the policy work for the greater good of all of us.'

The task force is currently preparing an inventory of government advertisements and brochures to determine the measure and quality of the policy's implementation. It intends to consult key community organizations and individuals with sensitivity on the subject to assist in this process. Finally, it is the intention of the task force to develop guidelines for advertisers and communications directors to assist them in the most important task of sensitively and realistically portraying the racial and ethnic diversity of Ontario.

Mark Nakamura, manager of the Race Relations Division of the Ontario Human Rights Commission, is a member of the task force. Other members of the task force include: J. Douglas Ewart, Director, Policy Development Division, Ministry of the Attorney General (chairman); G. Campbell McDonald, Executive Co-ordinator, Advertising and Promotion Services Group, Ministry of Tourism and Recreation; Richard Snell, Director, Communications Branch, Ministry of Agriculture and Food; Dr. Mavis Burke, Chairman, Ontario Advisory Council on Multiculturalism and Citizenship; and Donald Rennie, Communications Policy Co-ordinator, Cabinet Office.

The case of 'Hunky Bill'

A board of inquiry in British Columbia recently brought down a decision arising from a complaint of a Ukrainian Canadian professional group against a restaurateur who operated a large scale business under the trade name 'Hunky Bill'. The proprietor William Konyk was himself of Ukrainian background.

The complainant alleged that 'Hunky' was an offensive, discriminatory term that helped to perpetuate the stereotyping of particular people in the population. According to the dictionary, the term is used to disparage people of East-European background. (The word itself derives from 'Hungarian').

Mr. Dermod D. Owen-Flood, who constituted the board of inquiry, dismissed the complaint in a closely reasoned decision, which is of interest to Ontarians.

The centerpiece of his decision rested on his interpretation of section 2(1) of the Human Rights Code of British Columbia, which reads as follows:

> No person shall publish or display before the public, or cause to be published or displayed before the public, a notice, sign, symbol, emblem or other representation indicating discrimination or an intention to discriminate against a person, or class of persons in any manner prohibited by this Act.

This section is paralleled by our own *Human Rights Code*, section 12(1). Mr. Owen-Flood held that even if it could be said that 'Hunky Bill', by advertising his name, displayed a sign that indicated discrimination in some form (because the term itself is felt by many to have that quality), the complaint nonetheless failed because the display had to be in a 'manner prohibited by this Act'. In other words, he held that the mere display of a discriminatory sign or symbol did not constitute an infrigement of the Act, but had to occur in a manner which in itself was prohibited by the Code. This, he ruled, had not taken place in 'Hunky Bill's' self-advertisement.

Section 12(1) of our own Code states that one's rights are:

> Infringed by a person who publishes or displays before the public or causes the publication or display before the public of any notice, sign, symbol, emblem or other similar representation *that indicates the intention of the person to infringe* a right under Part 1 (of the Code) *or that is intended by the person to incite the infringement* of a right under Part 1.

For us, the question is whether the italicized part of this phrase is parallel to that on which Mr. Owen-Flood based his decision, and if so, whether the latter's ruling constitutes a precedent for a decision that may be made in Ontario in a similar case.

Getting here was hard
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racial, ethnic and religious discrimination in employment, housing and services. They publicized their findings and, having raised the public's consciousness of the nature and extent of discrimination, they doggedly kept after governments to pass anti-discrimination laws. Once basic legislation was passed, they continued to pressure to have it improved and to ensure that it was administered effectively. Throughout this period, black and Asian organizations, as well as religious and community groups, joined labour in an all-out assault on racism.

They pressed for action at the federal and provincial levels to obtain fair employment, fair accommodation and fair housing legislation. Immigration laws were attacked for their racial quotas....

Early educational programs during the 1960s, in all of the fledgling provincial commissions, were directed towards publishing literature to explain human rights legislation, set up displays, conferences, seminars, school events, public service advertising, film showings, and so on. During the early days, it was quite understandable that this would be the primary emphasis of commission educational programs – the laws were new, the public didn't understand them, there were no precedents and, indeed, in many cases, the business community and the press at first mistrusted us. We believed that pamphlets and leaflets would make us more acceptable and understandable; and the politicians supported this approach. Indeed, the early budgets of commissions showed that treasury boards and governments were amenable to pamphleteering and supported it financially: it was not controversial; you weren't taking people to court; you weren't causing trouble. There was a 'love thy brother and sister' approach that coincided with the prevailing attitude then . . . that you can't legislate attitudes and moral behaviour. Education – that is speeches, conferences and meetings – was the only way.

However, law, in itself, is educational and sets the tone for moral behaviour in our society. Proper and competent enforcement, including court cases and boards of inquiry, are also educational.

One of the traps into which many human rights administrators have unwittingly fallen is that of 'pigeonholing' and separating functions such as enforcement and education without realizing that, in fact, they are inextricably related and cannot be divorced from other important aspects of a commission's program.

In the long run, the primary battle against prejudice and discrimination has to be fought by eradicating certain inequities in the social milieu – glaring discrepancies involving the poor, involving older workers, involving the rights of women, handicapped persons, and involving overt and covert discrimination against racial minorities. It is not enough to educate and exhort in a vacuum; we must continue to link our educational objectives, our sensitivity training, our workshops, our literature, to concrete situations in the name of social justice. Twenty years of administering human rights legislation and consulting have taught me that much.

Let me close by quoting Alan Borovoy of the Canadian Civil Liberties Association:

> The pitfall in so much of our human rights education is its failure to come to grips with the prevailing problems in the community. We should spend less time on the active fanatic and more time on the inactive moderate. The results would be far more fruitful.

Daniel Hill served as the first director of the Ontario Human Rights Commission.

New Race Relations Commissioner

Mr. Peter Cicchi, an Ontario Human Rights Commissioner since September 1978, has been designated by order-in-council as a member of the Race Relations Division of the Ontario Human Rights Commission. The period of appointment runs until February 1984. We look forward to continuing our association with Mr. Cicchi in his new capacity, and wish him well.